



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2017-0468; FRL-9974-68-Region 9]**

#### **Approval of Arizona Air Plan Revisions, Arizona Department of Environmental Quality**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). This revision concerns emissions of lead-bearing fugitive dust from roads, storage piles and other activities associated with the primary copper smelter located in Hayden, Arizona. We are approving a state rule and associated appendix to regulate these emissions under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on **[Insert date 30 days after the date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2017-0468. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “**FOR**

**FURTHER INFORMATION CONTACT**” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, EPA Region IX, (415) 947-4125, [vineyard.christine@epa.gov](mailto:vineyard.christine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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### **I. Proposed Action**

On November 27, 2017 (82 FR 55966), the EPA proposed to approve the following rule and appendix into the Arizona SIP.

Local Agency	Rule #	Rule Title	Submitted
ADEQ	R18-2-B1301.01	Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter	04/06/17
ADEQ	Appendix 15	Test Methods for Determining Opacity and Stabilization of Unpaved Roads	04/06/17

We proposed to approve the rule and associated appendix because we determined that

they comply with the relevant CAA requirements. Our proposed action contains more information on the rule and associated appendix and our evaluation.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. During this period, we received three comments. Two commenters raised issues that are outside of the scope of this rulemaking, including forest management, wildfire suppression, and greenhouse-gas and other emissions from wildfires. A third commenter requested that the EPA "regulate the amount of poisonous dust that is kicked up into the air." As explained in our proposed action, Rule R18-2-B1301.01 establishes requirements to control lead-bearing fugitive dust emissions surrounding the Hayden copper smelter. Our approval of this rule into the Arizona SIP will make these requirements federally enforceable. Commenters did not raise any specific issues germane to the approvability of the rule and appendix.

## **III. EPA Action**

No comments were submitted that change our assessment of the rule and associated appendix as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule and associated appendix into the Arizona SIP.

## **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ADEQ rule and associated appendix described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the

person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup>

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

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<sup>1</sup> 62 FR 27968 (May 22, 1997)

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or pre-empt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 12, 2018

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart D--Arizona**

2. Section 52.120 is amended by adding in paragraph (c), under the table heading “Table 2—EPA-Approved Arizona Regulations” a subheading for “Article 13 (State Implementation Plan Rules for Specific Locations)” and entries for “R18-2-B1301.01” and “Appendix 15” after the entry for “Table 6” to read as follows:

**§52.120 Identification of plan.**

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(c) \* \* \*

**TABLE 2—EPA-APPROVED ARIZONA REGULATIONS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
<b>ARIZONA ADMINISTRATIVE CODE</b>				
*****				
<b>Article 13 (State Implementation Plan Rules For Specific Locations)</b>				
R18-2-B1301.01	Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter	December 1, 2018	<b>[INSERT Federal Register CITATION], [INSERT DATE OF PUBLICATION]</b>	Submitted on April 6, 2017.
Appendix 15	Test Methods for Determining Opacity	May 7, 2017	<b>[INSERT Federal Register CITATION], [INSERT DATE OF PUBLICATION]</b>	Submitted on April 6, 2017.



	and Stabilization of Unpaved Roads		<b>OF PUBLICATION]</b>	
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[FR Doc. 2018-03526 Filed: 2/21/2018 8:45 am; Publication Date: 2/22/2018]